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Before the  
Federal Communications Commission  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

MCI Petition for Declaratory Ruling  
That Carriers May Assess Interstate  
Customers an Interstate Universal  
Service Charge Which is Based on  
Total Revenues

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CC Docket No. 96-45

REPLY COMMENTS

MCI TELECOMMUNICATIONS CORPORATION

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Dated: May 1, 1998

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FEDERAL COMMUNICATIONS COMMISSION  
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<sup>2</sup> Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, FCC 97-157, 12 FCC Rcd 8776 (1997) (Universal Service Order or Order).

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the Telecommunications Resellers Association (TRA) and Sprint Communications Co. L.P.

(Sprint) argue that the Order allows recovery based on total revenues. In addition, Advanced Communications Group, Inc. supports MCI's request for a declaratory ruling, although it does not comment on the interpretation of the Commission's Order.<sup>3</sup>

Frontier argues that MCI's Petition should be denied because the Commission's Order "is clear on its face and does not admit of the interpretation that MCI seeks."<sup>4</sup> Specifically, Frontier cites paragraph 824 of the Order which states that the Commission "will assess and permit recovery of contributions to the rural, insular, and high cost and low-income support mechanisms based only on interstate revenues."<sup>5</sup> Frontier cites one paragraph where the Commission states that carriers can recover contributions based on interstate revenues. However, in other paragraphs discussing recovery mechanisms, the Commission states that carriers may recover their contributions to the universal service support mechanisms through rates for interstate services only.<sup>6</sup> At a minimum, this difference in language creates ambiguity which should be

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<sup>3</sup> Two other parties filed comments in this proceeding. However, neither addressed the issue at hand. Specifically, the comments of the Washington Utilities & Transportation Commission address MCI's recovery of the PICC, which is not at issue in this proceeding; and the GTE Service Corporation urges the Commission to reevaluate its current rules concerning the recovery of universal service contributions, although it supports the use of both interstate and intrastate revenues for the contribution base and a recovery mechanism that distributes the cost of universal service on the same basis.

<sup>4</sup> Frontier Comments at 3.

<sup>5</sup> See, Frontier Comments at 2-3, citing the Universal Service Order at para. 824.

<sup>6</sup> See, for example, Universal Service Order, paras. 809 and 825.

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resolved through this declaratory ruling.

The VSCC and the Ohio PUC argue there is no ambiguity that requires a declaratory ruling because the Commission limited recovery to “interstate rates only,” which precludes MCI and other carriers from assessing a federal universal service charge based on intrastate revenues. According to the Ohio PUC, “ all surcharges relating to the Federal USF program... are supposed to be interstate charges.”<sup>7</sup> The VSCC argues that a charge assessed against intrastate usage is an intrastate rate.<sup>8</sup> The VSCC also argues that customers are not either “interstate” or “intrastate.”<sup>9</sup> Thus, the VSCC and the Ohio PUC appear to argue that to the extent MCI’s federal universal service fee (FUSF) is determined based on customers’ intrastate revenues, it is an intrastate rate.

The crux of the argument of the Ohio PUC and the VSCC, that a fee is an intrastate rate to the extent that it is based on intrastate revenues, is not consistent with the Commission’s finding in the Order-- namely, that calculating a federal charge based on both interstate and intrastate revenues is distinct from regulating the rates and conditions of intrastate service and does not constitute rate regulation of those services or regulation of those services so as to violate section 2(b).<sup>10</sup> In their comments, the Ohio PUC states that it questions this finding<sup>11</sup> and the

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<sup>7</sup> Ohio PUC Comments at 3. (emphasis deleted)

<sup>8</sup> VSCC Comments at 3-4.

<sup>9</sup> VSCC Comments at 3.

<sup>10</sup> Universal Service Order at para. 821.

<sup>11</sup> Ohio PUC Comments at 5.

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MDPSC argues that the Commission cannot impose any assessment on carriers' intrastate revenues.<sup>12</sup> However, until it is either reconsidered or overturned by the Court, the finding serves as the basis for MCI's approach.

In addition, contrary to the argument of the VSCC, there is a distinction between interstate and intrastate customers. MCI tariffs services in both jurisdictions and customers can choose to be MCI intrastate only customers or MCI interstate only customers. Accordingly, because the FUSF is an interstate charge on interstate customers, MCI does not tariff the charge in its state tariffs and, therefore, it does not charge intrastate only customers the FUSF.<sup>13</sup>

Thus, in recovering its universal service costs from customers, MCI is simply following the Commission's rationale and approach. The rate MCI has established is an interstate rate that is imposed only on interstate customers. Imposing the FUSF on interstate customers' total billed revenues no more constitutes an interstate charge for an intrastate service than the Commission's universal service contribution requirement constitutes the interstate regulation of intrastate service. Moreover, since a sizable portion of the federal universal service fund allocation is based on total revenues, MCI's recovery mechanism matches its costs with cost causation. Accordingly, carriers should be allowed to assess a federal universal service charge based on customers' total revenues.

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<sup>12</sup> MDPSC Comments at 5-16.

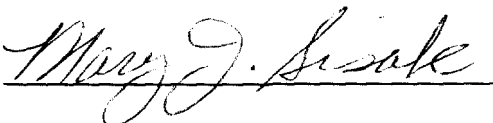
<sup>13</sup> The VSCC also submits arguments concerning the interpretation and lawfulness of MCI's federal tariff. These arguments, however, are beyond the scope of this Petition and are not appropriate for consideration in the context of a declaratory ruling on a Commission order. Accordingly, MCI does not address these arguments in this response.

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Based on the foregoing and on the arguments in the Petition, MCI requests that the Commission issue a declaratory ruling on an expedited basis finding that carriers are not precluded from imposing a universal service charge on interstate customers that is based on the customers' total revenues.

Respectfully submitted,

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Dated: May 1, 1998

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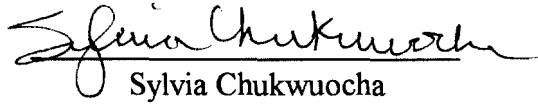
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